

1 CENTER FOR HUMAN RIGHTS & CONSTITUTIONAL LAW
2 Peter A. Schey (Cal. Bar No. 58232)
3 Carlos Holguín (Cal. Bar No. 90754)
4 256 South Occidental Boulevard
5 Los Angeles, CA 90057
6 Telephone: (213) 388-8693
7 Facsimile: (213) 386-9484
8 Email: pschey@centerforhumanrights.org
9 crholguin@centerforhumanrights.org

10 ORRICK, HERRINGTON & SUTCLIFFE LLP
11 Elena Garcia (Cal. Bar No. 299680)
12 egarcia@orrick.com
13 777 South Figueroa Street, Suite 3200
14 Los Angeles, CA 90017
15 Telephone: (213) 629-2020

16 *Attorneys for plaintiffs (listing continues on following page)*

17 UNITED STATES DISTRICT COURT

18 CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION

19 JENNY LISETTE FLORES, *et al.*, } Case CV 85-4544 DMG-AGR_x
20 Plaintiffs, } NOTICE OF MOTION AND MOTION
21 - VS - } FOR AWARD OF ATTORNEYS'
22 WILLIAM BARR, ATTORNEY GENERAL } FEES; MEMORANDUM IN SUPPORT
23 OF THE UNITED STATES, *et al.*, } OF MOTION
24 Defendants. } Hearing June 28, 2019 9:30 AM
25 } [HON. DOLLY M. GEE]
26
27
28

1 Plaintiffs' *counsel*, *continued*:

2 LA RAZA CENTRO LEGAL, INC.
3 Michael S. Sorgen (Cal. Bar No. 43107)
4 474 Valencia Street, #295
5 San Francisco, CA 94103
6 Telephone: (415) 575-3500

7 THE LAW FOUNDATION OF SILICON VALLEY
8 LEGAL ADVOCATES FOR CHILDREN AND YOUTH
9 Jennifer Kelleher Cloyd (Cal. Bar No. 197348)
10 Katherine H. Manning (Cal. Bar No. 229233)
11 Annette Kirkham (Cal. Bar No. 217958)
12 4 North Second Street, Suite 1300
13 San Jose, CA 95113
14 Telephone: (408) 280-2437
15 Facsimile: (408) 288-8850
16 Email: jenniferk@lawfoundation.org
17 kate.manning@lawfoundation.org
18 annettek@lawfoundation.org

19 *Of counsel*:

20 YOUTH LAW CENTER
21 Virginia Corrigan (Cal. Bar No. 292035)
22 832 Folsom Street, Suite 700
23 San Francisco, CA 94104
24 Telephone: (415) 543-3379

25 //
26
27
28

NOTICE OF MOTION AND MOTION

To Defendants and their Attorneys of Record:

Plaintiffs hereby give notice that on June 28, 2019, at 9:30 AM, or as soon thereafter as the matter may be heard, they will and hereby do move the Court for an award of attorneys' fees under the Equal Access to Justice Act ("EAJA"), for work performed opposing Defendants' *Ex Parte* Application for Limited Relief from the Settlement Agreement, resolved by this Court's Order Denying Defendants' *Ex Parte* Application for Limited Relief from Settlement Agreement [Dkt. # 455]. Plaintiffs allege (1) they are the prevailing party; (2) the position of Defendants, both before and throughout this litigation, was without substantial justification; and (3) no special circumstances make an award of fees unjust.

This application is based on the annexed Memorandum of Points and Authorities, the exhibits filed concurrently herewith, and the record of proceedings herein.

Dated: May 28, 2019.

Respectfully submitted,

CENTER FOR HUMAN RIGHTS &
CONSTITUTIONAL LAW
Peter A. Schey
Carlos Holguín

ORRICK, HERRINGTON & SUTCLIFFE LLP
Elena Garcia

LA RAZA CENTRO LEGAL, INC.
Michael S. Sorgen

THE LAW FOUNDATION OF SILICON VALLEY
LEGAL ADVOCATES FOR CHILDREN AND
YOUTH

1 Jennifer Kelleher Cloyd
2 Katherine H. Manning
3 Annette Kirkham

4 *Of counsel:*

5 YOUTH LAW CENTER
Virginia Corrigan

6 /s/Peter Schey

7 / / /

8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1 TABLE OF CONTENTS
2

3	I. INTRODUCTION.....	1
4	II. PLAINTIFFS QUALIFY FOR AN AWARD OF EAJA FEES AND	
5	COSTS.....	2
6	A Plaintiffs are prevailing parties.....	2
7	B Plaintiffs' net worth is far less than \$2,000,000.....	3
8	C EAJA fees may be awarded for work to protect a consent decree.....	4
9	D Defendants' position lacked substantial justification.....	5
10	III. LODESTAR CALCULATION.....	9
11	IV. SPECIAL FACTORS WARRANT A FEE AWARD AT MARKET	
12	RATES FOR PLAINTIFFS' SENIOR COUNSEL.....	10
13	A Plaintiffs' Class Counsel possess distinctive knowledge and	
14	specialized skill that was needful to the litigation.....	12
15	B Other qualified attorneys unavailable.....	14
16	V. CONCLUSION.....	14

17 ///
18
19
20
21
22
23
24
25
26
27
28

1
2 TABLE OF AUTHORITIES
3

4 **Cases**
5

6	<i>United States v. 22249 Dolorosa St.</i> , 190 F.3d 977 (9th Cir. 1999).....	7
7	<i>Animal Lovers Vol. Assn. v. Carlucci</i> , 867 F.2d 1224 (9th Cir. 1989).....	11
8	<i>Balla v. Idaho</i> , 677 F.3d 910 (9th Cir. 2012)	5
9	<i>Buchannon Bd. & Care Home, Inc. v. West Virginia Dep't of Health and Human Res.</i> , 532 U.S. 598, 121 S. Ct. 1835, 149 L. Ed. 2d 855 (2001).....	5
10	<i>Bullfrog Films, Inc. v. Wick</i> , 959 F.2d 782 (9th Cir. 1992).....	7
11	<i>Cobell v. Norton</i> , 407 F. Supp. 2d 140 (D. D.C. 2005).....	6
12	<i>Fang v. Gonzales</i> , No. 03-71352, 2006 WL 5669901, *3 (9th Cir. Oct. 30, 2006) (Unpub. Disp.)	13
13	<i>Gutierrez v. Barnhart</i> , 274 F.3d 1255 (9th Cir. 2001)	7
14	<i>Hensley v. Eckerhart</i> , 461 U.S. 424, 103 S. Ct. 1933, 76 L.Ed.2d 40 (1983).....	11
15	<i>In re Mgndichian</i> , 312 F. Supp. 2d 1250 (C.D. Cal. 2003)	9
16	<i>Jeff D. v. Andrus</i> , 899 F.2d 753 (9th Cir. 1989).....	7
17	<i>Kali v. Bowen</i> , 854 F.2d 329 (9th Cir. 1988)	8
18	<i>Keith v. Volpe</i> , 833 F.2d 850 (9th Cir. 1987)	5, 6
19	<i>Love v. Reilly</i> , 924 F.2d 1492 (9th Cir. 1991)	7
20	<i>Muhur v. Ashcroft</i> , 382 F.3d 653 (7th Cir. 2004).....	13
21	<i>Nadarajah v. Holder</i> , 569 F.3d 906 (9th Cir. 2009)	13, 16
22	<i>Orantes-Hernandez v. Holder</i> , 713 F. Supp. 2d 929 (C.D. Cal. 2010)	13
23	<i>Oregon Environmental Council v. Kunzman</i> , 817 F.2d 484 (9th Cir. 1987)	7
24	<i>Pennsylvania v. Delaware Valley Citizens' Council for Clean Air</i> , 478 U.S. 546 (1986)	6

1	<i>Perez-Arellano v. Smith</i> , 279 F.3d 791 (9th Cir. 2002).....	5
2	<i>Pierce v. Underwood</i> , 487 U.S. 552 (1988)	8, 13
3	<i>Prandine v. National Tea Co.</i> , 585 F.2d 47 (3d Cir. 1978).....	12
4	<i>Prison Legal News v. Schwarzenegger</i> , 608 F.3d 446 (9th Cir. 2010)	5
5	<i>Scarborough v. Principi</i> , 541 U.S. 401, 24 S. Ct. 1856, 158 L. Ed. 2d 674 (2004)4, 9	
6	<i>Stanford Dailey v. Zurcher</i> , 64 F.R.D. 680 (N.D. Cal. 1974)	12
7	<i>Thangaraja v. Gonzales</i> , 428 F.3d 870 (9th Cir. 2005)	12
8		
9	Statutes	
10	28 U.S.C. § 2412(d).....	4
11	28 U.S.C. § 2412(d)(1)(A)	4
12	Pub. L. No. 96-481, 94 Stat. 2325	3
13	110 Pub. L. 457, 122 Stat. 5044	14
14	Homeland Security Act of 2002, Pub. L. 107-296, 116 Stat. 2135.....	14

15 // /

16
17
18
19
20
21
22
23
24
25
26
27
28

1 I. INTRODUCTION
2

3 Plaintiffs apply for an award of attorney's fees and costs incurred in this
4 Court and in the Ninth Circuit Court of Appeals to prosecute Defendants' *Ex Parte*
5 Application for Limited Relief from the Settlement Agreement ("Settlement").
6

7 On July 9, 2018, the district court denied Defendants' *Ex Parte* Application
8 for Limited Relief from the Settlement Agreement finding that the *Ex Parte*
9 Application is procedurally improper and wholly without merit. Order Denying
10 Defendants' *Ex Parte* Application for Limited Relief from Settlement Agreement
11 [Dkt. # 455] ("July 9, 2018, Order").
12

13 Plaintiffs now apply pursuant to the Equal Access to Justice Act, 28 U.S.C. §
14 2412(d) ("EAJA"), for an award of attorney's fees and costs incurred in securing
15 the July 9, 2018, Order, in the total amount of \$42,359.00.
16

17 The EAJA allows litigants to recover fees and costs in actions certain against
18 the United States, thus encouraging the vindication of rights by persons who would
19 otherwise be deterred from challenging governmental action because of the expense
20 of litigation. Pub. L. No. 96-481, 94 Stat. 2325. In pertinent part, the EAJA
21 provides:
22

23 Except as otherwise specifically provided by statute, a court shall award to a
24 prevailing party other than the United States fees and other expenses, in
25 addition to any costs awarded pursuant to subsection (a), incurred by that
26 party in any civil action (other than cases sounding in tort), including
27 proceedings for judicial review of agency action, brought by or against the
28 United States in any court having jurisdiction of that action, unless the court
finds that the position of the United States was substantially justified or that

1 special circumstances make an award unjust.

2 28 U.S.C. § 2412(d)(1)(A).

3 As will be seen, Plaintiffs satisfy all requirements for an award of EAJA fees
4 and costs; the Court should accordingly grant the instant motion and award fees and
5 costs as herein requested.

6

7 II. PLAINTIFFS QUALIFY FOR AN AWARD OF EAJA FEES AND COSTS.

8 Pursuant to 28 U.S.C. § 2412(d) “eligibility for a fee award in any civil
9 action requires: (1) that the claimant be ‘a prevailing party’; (2) that the
10 Government’s position was not ‘substantially justified’, (3) that no ‘special
11 circumstances make an award unjust’; and (4) pursuant to 28 U.S.C. § 2412(d), that
12 any fee application be submitted to the court within 30 days of final judgment in the
13 action and be supported by an itemized statement.” *Ibrahim v. U.S. Department of*
14 *Homeland Sec.*, 912 F.3d 1146, 1167 (9th Cir. 2019) (en banc) (quoting *Comm’r,*
15 *I.N.S. v. Jean*, 496 U.S. 154, 158 (1990)).

16 Once this showing is made, the burden shifts to the Government to prove that
17 its position, both before and during the litigation, was substantially justified or that
18 special circumstances make an award of attorney’s fees unjust. *Scarborough v.*
19 *Principi*, 541 U.S. 401, 416-17, 124 S. Ct. 1856, 158 L. Ed. 2d 674 (2004).

20

21 **A. Plaintiffs are prevailing parties.**

22 Under the EAJA, a party prevails when it has been granted “some relief by a
23 court.” *Buchannon Bd. & Care Home, Inc. v. West Virginia Dep’t of Health and*

1 *Human Res.*, 532 U.S. 598, 603, 121 S. Ct. 1835, 149 L. Ed. 2d 855 (2001).¹ To
2 prove prevailing party status, an EAJA petitioner must establish: (1) a “material
3 alteration of the legal relationship of the parties,” and (2) a “judicial imprimatur on
4 the change.” *Id.* at 604-05.

5 A party prevails when it has obtained an enforceable settlement or consent
6 decree, and for work to achieve compliance with a settlement’s terms. *Prison Legal*
7 *News v. Schwarzenegger*, 608 F.3d 446, 451-52 (9th Cir. 2010); *Keith v. Volpe*,
8 833 F.2d 850, 857 (9th Cir. 1987); *see also Balla v. Idaho*, 677 F.3d 910, 918 (9th
9 Cir. 2012) (work for “compliance monitoring” of settlement compensable).

10 The district court’s July 9, 2018, Order denied, “(1) an exemption from the
11 *Flores* Agreement’s release provision so that Immigration and Customs
12 Enforcement (‘ICE’) may detain alien minors who have arrived with their parents
13 or legal guardian together in ICE family residential facilities, and (2) an exemption
14 from the *Flores* Agreement’s state licensure requirement,” as being “procedurally
15 improper and wholly without merit.” *Id.* at 1 and 7. Plaintiffs clearly prevailed and
16 accordingly satisfy the first requirement for an EAJA fee award.

17 **B. Plaintiffs’ net worth is far less than \$2,000,000.**

18 Pursuant to 28 U.S.C. § 2412(d)(2)(B)(i), a party’s “net worth [must] not

19 ¹ Although *Buckhannon* involved non-EAJA fee-shifting statutes, this Court has
20 held that the requirements of a prevailing party announced in that decision are
21 applicable to EAJA awards as well. *Perez-Arellano v. Smith*, 279 F.3d 791, 793
22 (9th Cir. 2002).

1 exceed \$2,000,000 at the time the civil action was filed...”
2

3 The original plaintiffs in this action were indigent at the time this action
4 commenced. Declaration of Peter Schey, May 28, 2019, ¶ 11 (“Schey Dec.”).
5 Further, it is virtually self-evident that plaintiff class members are generally
6 indigent as well. By definition, they are immigrant or refugee youth in federal
7 custody because the Government wishes to remove them. Settlement ¶¶ 10- 11; *see*
8 *also* Schey Dec. ¶ 11 (*Flores* plaintiff class members are detained and indigent).
9

10 Plaintiffs accordingly meet the second requirement for an EAJA fee award.
11

12 *See Cobell v. Norton*, 407 F. Supp. 2d 140, 148-49 (D. D.C. 2005) (“affidavits
13 signed by the class representatives, attesting to the fact that their net worth fell
14 within EAJA statutory guidelines at the time the litigation was initiated ... amply
15 satisfy the requirements of the statute for the entire class.”).
16

17 **C. EAJA fees may be awarded for work to protect a consent decree.**
18

19 In *Pennsylvania v. Delaware Valley Citizens' Council for Clean Air*, 478
20 U.S. 546, 558-559, 106 S. Ct. 3088, 92 L.Ed.2d 439 (1986), the plaintiff obtained a
21 consent decree and thereafter conducted additional litigation and administrative
22 advocacy to protect that decree. The Court held the plaintiff entitled to recover
23 attorney's fees and costs for this post-settlement work. 478 U.S. at 558-60.
24

25 Following *Delaware Valley*, numerous courts have affirmed litigants' right to
26 recover attorney's fees and costs for work to enforce court-approved settlements.
27

28 *E.g., Keith v. Volpe*, 833 F.2d 850, 857 (9th Cir. 1987) (“the district court here ‘was

entitled to believe that relief [for the plaintiffs under the consent decree] would occur more speedily and reliably' if the [plaintiffs] engaged in these monitoring activities, and this post-judgment monitoring by the [plaintiffs] was, therefore, 'a necessary aspect of plaintiffs' "prevailing"' in the case.'"); *Jeff D. v. Andrus*, 899 F.2d 753, 765 (9th Cir. 1989) (plaintiffs entitled to attorney's fees for work subsequent to the settlement despite waiving pre-settlement fees; "issues in these appeals are separate from the settlement of the underlying litigation and the waiver of attorney's fees in the settlement does not affect our disposition here.").²

D. Defendants' position lacked substantial justification.

Because Plaintiffs both prevailed and meet the EAJA’s net worth standard, “an award of fees is mandatory under the EAJA unless the government’s position is substantially justified or special circumstances exist that make an award of fees unjust.” *Love v. Reilly*, 924 F.2d 1492, 1495 (9th Cir. 1991). Defendants must carry the burden of proof with respect to both factors. *Id.*; see also *Ibrahim*, 912 F.3d at 1167; *Oregon Environmental Council v. Kunzman*, 817 F.2d 484, 498 (9th Cir. 1987); *United States v. 22249 Dolorosa St.*, 190 F.3d 977, 982 (9th Cir. 1999).³

² In both *Keith* and *Jeff D.*, the court reviewed fees awarded under 42 U.S.C. § 1988. However, identical principles apply to an award of post-judgment attorney's fees under the EAJA. *Bullfrog Films, Inc. v. Wick*, 959 F.2d 782, 786 (9th Cir. 1992).

³ In evaluating the Government's showing, courts consider conduct both prior to and during litigation. *Gutierrez v. Barnhart*, 274 F.3d 1255, 1259 (9th Cir. 2001) ("Thus we 'must focus on two questions: first, whether the government was substantially justified in taking its original action; and, second, whether the

1 “The test for whether the government is substantially justified is one of
2 ‘reasonableness.’” *Gonzalez v. Free Speech Coal.*, 408 F. 3d 613, 618 (9th Cir.
3 2005). “Put another way, substantially justified means there is a dispute over which
4 ‘reasonable minds could differ.’” *Id.* (quoting *League of Women Voters v. FCC*,
5 798 F.2d 1255, 1260 (9th Cir. 1986)); *see also Pierce v. Underwood*, 487 U.S. 552,
6 566 n.2 (1988) (position can be substantially justified “even though it is not correct
7 . . . if it has a reasonable basis in law and fact”).

8 In analyzing the reasonableness of the Government’s position, a court
9 considers the totality of the circumstances, which incorporates both the underlying
10 governmental action and the Government’s trial court position. *Gutierrez v.*
11 *Barnhart*, 274 F.3d 1255, 1258 (9th Cir. 2001) (“This we ‘must focus on two
12 questions: first, whether the government was substantially justified in taking its
13 original action; and, second, whether the government was substantially justified in
14 defending the validity of the action in court.’”); *Kali v. Bowen*, 854 F.2d 329, 332
15 (9th Cir. 1998) (inquiry includes whether both the original action and the defense of
16 the action was substantially justified); *see also Rawlings v. Heckler*, 725 F.2d 1192,
17

18 government was substantially justified in defending the validity of the action in
19 court.””).

20 “To show substantial justification for [its] position, the [Government] has the
21 burden of establishing that the conduct had a ‘reasonable basis both in law *and*
22 fact.’” *Kali v. Bowen*, 854 F.2d 329, 332 (9th Cir. 1988) (quoting *Pierce v.*
23 *Underwood*, 487 U.S. 552, 565, 108 S. Ct. 2541, 101 L.Ed.2d 490 (1988))
24 (emphasis added).

1 1196 (9th Cir. 1984). Moreover, “the EAJA – like other fee-shifting statutes –
2 favors treating a case as an inclusive whole, rather than as atomized line-items.”
3
4 *Ibrahim*, 912 F.3d at 1169 (quoting *Jean*, 496 U.S. at 161-62).

5 Plaintiffs have alleged that Defendants’ position was without substantial
6 justification and that no special circumstances make a fee award unjust. Such
7 allegations suffice to shift the burden to Defendants to show that their position was
8 substantially justified or that special circumstances would make a fee award unjust.⁴
9
10 *Scarborough v. Principi*, *supra*, 541 U.S. at 416-17; *In re Mngdichian*, 312 F.
11 Supp. 2d 1250, 1255 (C.D. Cal. 2003) (prevailing party need only “by alleg[e] that
12 the government’s position was not substantially justified and that no special
13 circumstances exist that make an award unjust.”); 28 U.S.C. § 2412(d) (“A party

14

15 ⁴ In all events, Defendants’ attempted to create (1) an exemption from the *Flores*
16 Agreement’s release provision so that Immigration and Customs Enforcement
17 (“ICE”) may detain minors who have arrived with their parents or legal guardian
18 together in ICE family residential facilities, and (2) an exemption from the *Flores*
19 Agreement’s state licensure requirement. Defendants’ positions were without
20 justification, substantial or otherwise. *See e.g.*, July 09 Order at 1-2 (“Defendants’
21 *Ex Parte* Application is a thinly veiled motion for reconsideration without any
22 meaningful effort to comply with the requirements of Local Rule 7-18”). On July
23 24, 2015, the Court denied Defendants’ motion seeking to modify the *Flores*
24 Agreement “on the same grounds now raised anew in Defendants’ *Ex Parte*
25 Application.” *Id.* (citation omitted). In short, Defendants have run afoul of Local
26 Rule 7-18 because the *Ex Parte* Application “repeat[s] . . . oral or written argument
27 made in support of the earlier Motion to Amend C.D. Ca. L.R. 7-18.” *Id.* Even if
28 Local Rule 7-18 did not bar Defendants’ *Ex Parte* Application, “it would still fail
under the Rule 60(b) analysis. The Court’s July 24, 2015 Order analyzed in great
detail the relevant *Flores* Agreement language and applicable legal authorities,
responding to the same changed circumstances that the parties could not have
foreseen at the time of their Agreement, it is unnecessary to replow the same
familiar territory.” *Id.* (citation omitted).

1 seeking an award of fees ... shall also allege that the position of the United States
2 was not substantially justified.”).

3
4 Nevertheless, it is clear in this case that the Government’s arguments for
5 exemptions from the *Flores* Settlement lacked substantial justification.

6 First, Defendants “deterrence” argument has previously been considered and
7 rejected by the district court.

8
9 Second, Defendants’ influx argument has previously been considered and
10 rejected by this Court and the Ninth Circuit Court of Appeals.

11
12 Third, Defendants’ statistics and other available evidence shows that
13 Defendants were not in May-June 2018 facing an unanticipated surge in family
14 apprehensions warranting a modification of the *Flores* Settlement.

15
16 Fourth, Defendants’ proposed “narrow modification” to eliminate
17 accompanied class member’s right to prompt release was not a “narrow”
18 modification nor was it necessary to allow families to stay together. Paragraph 14
19 of the Settlement provides an alternative to detention for a child if a parent decides
20 it is in his or her child’s best interest to be released under Paragraph 14.

21
22 Fifth, Defendants’ proposed “narrow modification” to eliminate the option of
23 class members to be housed in licensed facilities was not a “narrow” modification
24 nor was it necessary to allow families to stay together. The district court had
25 already ruled: “The purpose of the licensing provision is to provide class members
26 the essential protection of regular and comprehensive oversight by an independent

1 child welfare agency.” Chambers Order [Dkt. # 177] at 14. Defendants offered no
2 significant change in circumstances warranting revision of Paragraph 19 of the
3 Agreement so that it’s terms would no longer apply to accompanied children.
4

5 As the district court pointed out, “Defendants have not shown that applying
6 the *Flores* Agreement ‘prospectively is no longer equitable[,]’ (citation omitted) or
7 that ‘manifest injustice’ will result if the Agreement is not modified.” July 9, 2018,
8 Order at 7.

9
10 III. LODESTAR CALCULATION.
11

12 A “lodestar” figure for the amount of fees Plaintiffs should recover is
13 calculated by multiplying the number of hours counsel reasonably dedicated by the
14 inflation-adjusted EAJA hourly rate. *Hensley v. Eckerhart*, 461 U.S. 424, 433, 103
15 S. Ct. 1933, 76 L.Ed.2d 40 (1983).⁵

16
17 The inflation-adjusted EAJA base rates for the periods counsel worked on the
18 instant matter appear at
19
20 www.ca9.uscourts.gov/content/view.php?pk_id=0000000039 (last visited May 22,
21 2019).⁶
22

23
24 ⁵ An increase over the base rate to account for inflation is granted in all but unusual
25 circumstances. *Animal Lovers Vol. Assn. v. Carlucci*, 867 F.2d 1224, 1227 (9th Cir.
1989).

26
27 ⁶ Prior to 1996 the EAJA set a base rate of \$75 per hour. 28 U.S.C. § 2412(d)(2)(A)
28 (1994). In 1996 Congress increased the base rate to \$125 per hour for cases
commenced on or after March 29, 1996. *Sorenson v. Mink*, 239 F.3d 1140, 1145
(9th Cir. 2001).

1 The hours counsel devoted to prosecuting this action, adjusted for time that
2 was poorly documented or excessive, appear in the itemized time records annexed
3 to the declarations of Plaintiffs' counsel. Schey Dec. ¶ 10 and Exhibit A;
4 Declaration of Virginia Corrigan, May 2, 2019, Exhibit 2 ("Corrigan"); Declaration
5 of Rachel Leach ("Leach"), Exhibit 3; Declaration of Laura Diamond ("Diamond"),
6 Exhibit 4.⁷ These hours multiplied by the Court's inflation-adjusted base rates yield
7 a lodestar fee request of \$ 42,359.00.
8
9

10 As will be seen, however, the Court should award Class Counsel fees at
11 hourly rates above the inflation-adjusted EAJA rate.
12

13 IV. SPECIAL FACTORS WARRANT A FEE AWARD AT MARKET RATES FOR PLAINTIFFS'
14 SENIOR COUNSEL.

15 The EAJA authorizes the Court to award attorney's fees at market rates
16 where there is a "limited availability of qualified attorneys for the proceedings
17 involved," or where plaintiffs' counsel possess "distinctive knowledge" and
18 "specialized skill" that was "needful to the litigation in question" and "not available
19 elsewhere at the statutory rate." *Thangaraja v. Gonzales*, 428 F.3d 870, 876 (9th
20 Cir. 2005); *see also Pierce v. Underwood*, 487 U.S. 552, 572, 108 S. Ct. 2541, 101

23 The Court's calculations appear to adjust the 1996 rate for inflation. Since this
24 action commenced in 1985, it would appear the applicable base rate is \$75 per hour.
25 Inflation adjustments to the \$75 rate appear in Exhibit C to the Declaration of Peter
26 Schey, *supra*. They differ little from the Court's hourly rates.

27 ⁷ Time spent preparing the instant EAJA motion is also compensable. *See Prandine*
28 *v. National Tea Co.*, 585 F.2d 47, 54 (3d Cir. 1978); *Stanford Dailey v. Zurcher*, 64
F.R.D. 680 (N.D. Cal. 1974).

1 L.Ed.2d 490 (1988) (“Examples . . . would be an identifiable practice specialty such
2 as patent law, or knowledge of foreign law or language.”).

3
4 In *Nadarajah v. Holder*, 569 F.3d 906, 912 (9th Cir. 2009), this Court held
5 this test satisfied where counsel had “distinctive knowledge and specialized skill in
6 immigration law and, in particular, constitutional immigration law and litigation
7 involving the rights of detained immigrants.” *See also Fang v. Gonzales*, No. 03-
8 71352, 2006 WL 5669901, *3 (9th Cir. Oct. 30, 2006) (Unpub. Disp.) (“Counsel
9 Smith’s specialized skills and distinctive ‘knowledge of . . . particular, esoteric
10 nooks and crannies of immigration law,’ ... enabled her to ... to succeed in obtaining
11 relief from removal for Fang,” quoting *Muhur v. Ashcroft*, 382 F.3d 653, 656 (7th
12 Cir. 2004)). This Court accordingly awarded the prevailing party’s most
13 experienced attorney fees at \$500 per hour. 569 F.3d at 912-15.

14
15 In *Orantes-Hernandez v. Holder*, 713 F. Supp. 2d 929 (C.D. Cal. 2010), the
16 Government moved to dissolve an injunction requiring immigration authorities to
17 follow specific procedures when detaining, processing and removing Salvadoran
18 nationals. The court largely denied the motion, and the plaintiffs sought EAJA fees
19 at market rates because defending against the Government’s motion required
20 specialized knowledge of, *inter alia*, the history of the litigation that had resulted in
21 the injunction. *Id.* at 959-60.

22
23 The district court awarded fees at \$625-675 for senior counsel. *Id.* at 964. In
24 addition to requiring special knowledge of immigration law and procedure, the

1 court held, the prevailing parties' counsel has *specialized knowledge of the*
2 *proceedings that had led to the entry of the challenged injunction, id.* at 960, and
3 had specialized skills—including proficiency in Spanish—that were necessary to
4 defend the injunction. *Id.*

5 **A. Plaintiffs' Class Counsel possess distinctive knowledge and**
6 **specialized skill that was needful to the litigation.**

7 As in *Orantes* and *Nadarajah*, Plaintiffs' counsel here have extensive
8 experience, knowledge and specialized skill in immigration law, youth law, and
9 more particularly, the rights of detained immigrant and refugee juveniles as they
10 exist at the intersection of the Settlement, the Homeland Security Act of 2002, Pub.
11 L. 107-296, 116 Stat. 2135 (“HSA”), the William Wilberforce Trafficking Victims
12 Protection Reauthorization Act of 2008, 110 Pub. L. 457, 122 Stat. 5044
13 (“TVPRA”), and the United States Constitution.

14 First, Plaintiffs' counsel are highly skilled litigators with vast expertise in
15 representing immigrants, refugees and youth.

16 Plaintiffs' class counsel Schey has knowledge and highly specialized skill in
17 immigration law, and in particular, the rights of immigrant and refugee children.
18 See Exhibits 1 and 2. As reflected in his declaration, class counsel in this case is
19 among the leading attorneys in the nation litigating cases involving the rights of
20 immigrants and refugees. He has successfully litigated multiple statewide and
21 nationwide class actions cases involving the rights of immigrant youth for over 35

1 years. *Id.*

2 Here, prosecuting Plaintiffs' action required specialized expertise in
3 immigration law and the *Flores* Agreement to the interpretation of federal consent
4 decrees as these distinct areas of the law affect a discrete and otherwise defenseless
5 subclass: immigrant and refugee youth in federal detention facilities. Distinctive
6 knowledge of the *Flores* Agreement, the meaning of its terms under federal
7 immigration laws, and the Government's policies and practices in implementing the
8 Agreement, as well as the ability to converse in Spanish, were necessary to the
9 successful resolution of this litigation. *See Schey Dec.* ¶ 6.

10 Vindicating the rights of children in ICE custody required far more than skill
11 in enforcing contracts: it required specialized expertise in the intersection of
12 multiple sources of law as it affects a discrete and vulnerable subclass: immigrant
13 and refugee youth in ICE custody. Opposing Defendants' effort to terminate the
14 settlement for accompanied minors required a deep understanding of (i) the
15 settlement itself, (ii) the negotiations that resulted in that agreement, (iii) the
16 intersection of the settlement with other pertinent law, particularly § 235 of the
17 William Wilberforce Trafficking Victims Protection Reauthorization Act, and (iv)
18 Defendants' policies, practices and procedures affecting detained immigrant and
19 refugee children were essential to affording the *Flores* plaintiffs a fair chance of
20 overcoming Defendants' ex parte application seeking to effectively terminate the
21 Settlement's protections for thousands of accompanied minors.

1 **B. Other qualified attorneys unavailable.**

2 Further, few, if any, other lawyers in the country could or would have
3 successfully opposed Defendants' effort to terminate the Settlement for
4 accompanied class members at the inflation-adjusted EAJA rate. Market rates for
5 lawyers with skills and experience comparable to plaintiffs' Class Counsel are in
6 the range of \$975 hourly.

7 These factors warrant the Court's awarding attorney's fees at rates "in line
8 with those prevailing in the community for similar services by lawyers of
9 reasonably comparable skill, experience and reputation." *Nadarajah, supra*, 569
10 F.3d at 916. *See also* Declaration of Carol Sobel, Exhibit 5, ¶¶ 22-24 (Peter Schey's
11 market rate is \$975/hour).

12 Plaintiffs accordingly seek fees as reflected in the following table:

13 <i>Attorney</i>	14 <i>Hrs.</i>	15 <i>Hourly Rate</i>	16 <i>Totals</i>
17 Peter Schey	18 38	19 950	20 \$36,100
21 Virginia Corrigan	22 9	23 205.20	24 \$1,847
25 Laura Diamond	26 6	27 205.20	28 \$1,231
29 Rachel Leach	30 15.5	31 205.20	32 \$3,181

33 The total fees sought is \$42,359.00.

34 V. CONCLUSION

35 For the foregoing reasons, this Court should award Plaintiffs attorneys' fees

1 pursuant to 28 U.S.C. § 2412(d) as herein requested.
2

3 Dated: May 28, 2019.

Respectfully submitted,

4 CENTER FOR HUMAN RIGHTS &
5 CONSTITUTIONAL LAW
Peter A. Schey
Carlos Holguín

6 ORRICK, HERRINGTON & SUTCLIFFE LLP
7 Elena Garcia

8 LA RAZA CENTRO LEGAL, INC.
9 Michael S. Sorgen

10 THE LAW FOUNDATION OF SILICON VALLEY
11 LEGAL ADVOCATES FOR CHILDREN AND YOUTH
12 Jennifer Kelleher Cloyd
Katherine H. Manning
Annette Kirkham

13 *Of counsel:*

14 YOUTH LAW CENTER
15 Virginia Corrigan

16 /s/Peter Schey
17
18
19
20
21
22
23
24
25
26
27
28

1 CERTIFICATE OF SERVICE
2

3 I, Peter Schey, declare and say as follows:
4

5 I am over the age of eighteen years of age and am a party to this action. I am
6 employed in the County of Los Angeles, State of California. My business address
7 is 256 S. Occidental Blvd., Los Angeles, CA 90057, in said county and state.
8

9 On May 28, 2019 I electronically filed the following document(s):
10

- 11 • NOTICE OF MOTION AND MOTION FOR AWARD OF ATTORNEYS' FEES;
12 MEMORANDUM IN SUPPORT OF MOTION

13 with the United States District Court, Central District of California by using the
14 CM/ECF system. Participants in the case who are registered CM/ECF users will be
15 served by the CM/ECF system.
16

17 Dated: May 28, 2019

18 /s/Peter Schey

19

20

21

22

23

24

25

26

27

28